In the High Court of Judicature at Madras

Dated : 14.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1275 of 2009

The Commissioner of Central Excise,
Chennai II Commissionerate,
Nandanam, Chennai-35. ...Appellant

Vs

1.M/s.SRF Limited, Gummidipoondi.
601201.

2.The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexe, I Floor,
No.26, Haddows Road, Chennai-6. ...Respondents

APPEAL under Section 35G of the Central Excise Act, 1944 against Final Order No.831 of 2008 dated 04.8.2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench in Appeal No.E/ 317/2006.

For Appellant :Ms.P.Srija for
Mr.E.Vijay Anand
For Respondent-1:Mr.A.P.Srinivas

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 04.8.2008 raising the following substantial questions of law :

> "i. Whether, in the facts and circumstances of the case, MODVAT Credit can be availed on the inputs used in manufacture of goods exempted by virtue of Rule 57F(3) and Notification 214/86-CE dated 01.3.1986 ? and

ii. Whether the Customs, Excise and Service Tax Appellate Tribunal was correct in law in applying the ratio of the Larger Bench decision in M/s.Sterlite Industries Limited to this case ?"

2. The issue, which fell for consideration before the Tribunal, was that the respondent - assessee, which was engaged in the manufacture of nylon tyre cord fabrics during the period in dispute i.e. between May 2000 and August 2002, had manufactured the goods on their own as well as on job work basis. Those goods, which were manufactured on their own, were cleared on payment of duty and those on job work were cleared without payment of duty under Rule 57AC(5) of the Central Excise Rules, 1944/Rule 4(5)(i) of the CENVAT Credit Rules, 2001/2002 and after availing the benefit of Notification No.214/86-CE.

3. The Department proposed to disallow the credit taken on the quantity of inputs, which were used in the manufacture of job worked products on the ground that the benefit was not admissible to inputs used in the manufacture of exempted goods. The Tribunal, in the impugned order, followed the decision of the Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. Commissioner [(2005) 183 ELT 353 (Tri. - LB)]. The Tribunal further recorded that the Revenue impliedly conceded that the said decision of the Larger Bench covers the issue, yet contested the matter raising various contentions. Ultimately, the Tribunal held that the said decision of the Larger Bench was rendered on a similar set of facts, as, in that case also, the job worker had cleared a part of their production on payment of duty, which was independent production of their own.

4. Simultaneously, rest of their production covered by job work, was cleared to principal manufacturers without payment of duty in terms of Notification No.214/86-CE and the assessee availed MODVAT/CENVAT Credit on inputs used in both the categories of final product. The Larger Bench of the Tribunal noted in the case of Sterlite Industries (I) Ltd., that the job worker was entitled to do. Accordingly, the Tribunal dismissed the appeal filed by the Revenue and at that stage, noted that the Revenue had not obtained any stay of operation of the order passed by the Larger Bench of the Tribunal.

5. The learned counsel for the first respondent points out that an identical issue was considered by the Hon'ble Division Bench of this Court in the case of Commissioner of Central Excise, Chennai IV Vs. Kyungshin Industrial Motherson Ltd. [reported in (2016) 332 ELT 69].

6. We have heard the learned counsel on either side.

7. In Kyungshin Industrial Motherson Ltd., an identical issue came up for consideration wherein also, the Tribunal relied the decision in the case of Sterlite Industries (I) Ltd. The Hon'ble Division Bench noted that the decision of the Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd., was approved by the Hon'ble Division Bench of the Bombay High Court in the case of Commissioner Vs. Sterlite Industries (I) Ltd. [reported in (2009) 244 ELR A89]. The Hon'ble Division Bench of this Court further held that a similar view was taken by another Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of Commissioner Vs. Hwashin Automotive India Pvt. Ltd. [reported in (2014) 304 ELT A16] and also the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Central Excise Vs. Sivaramakrishna Forgings Pvt. Ltd. [reported in (2015) 322 ELT 697].

8. In the light of the fact that the decision of the Larger Bench of the Tribunal stood approved in the decision of the Bombay High Court and that the same was referred to by the Tribunal while passing the impugned order, we find that there is no error in the order passed by the Tribunal.

9. Thus, the above civil miscellaneous appeal filed by the Revenue is dismissed and the substantial questions of law are answered in favour of the assessee and against the Revenue by confirming the order passed by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To
1. The Customs, Excise and Service Tax Appellate Tribunal,
No.26, Sastri Bhavan Annexe Building, I Floor,
Haddows Road, Chennai-6.
2. The Commissioner of Central Excise,
Chennai-II Commissionerate, Nandanam, Chennai-35.
3. The Customs, Excise and Service Tax Appellate
Tribunal, Chennai Bench.
+ 1 cc to MR. S. Jaikumar, Advocate Sr.55957
+ 1 cc to MR. A.P. Srinivas Advocate Sr.56602

CMA.No.1275 of 2009

VBA(CO)
EU(14/09/2018)